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District Court of the United States in Bankruptcy, Eastern District of Pennsylvania. August 31, 1867.

EX PARTE DONALDSON.¹

An unimpugned creditor's lien having, before the commencement of voluntary proceedings in bankruptcy, attached upon part of the bankrupt's estate, no consideration of probable sacrifice of the subject of the lien under judicial proceedings for its enforcement in a state court, will induce a court of the United States to restrain, delay, or hinder the creditor from prosecuting them. No equity of the general body of the bankrupt's creditors can be asserted for their common, equal benefit, on the mere ground of doubtfulness of his title to the subject of the lien and the danger of consequent sacrifice at a forced sale. *Quære*, whether such an equity can be asserted on their behalf in any case without such a payment of his demand as may substitute the assignee in bankruptcy for him as to the lien.

A PETITION is this day presented by a voluntary bankrupt whose original petition for adjudication and relief was filed on the 6th of the present month. He was adjudged a bankrupt by the register on the 12th, when a warrant was issued appointing the first meeting of creditors for 16th of September next. The present petition referring to a judgment obtained in April last under adversary proceedings against the petitioner, and to an execution under it, asserts that real estate already sold by the sheriff under this execution is alleged by the plaintiff to be the petitioner's, but is denied by the petitioner to be his property. Having been advised that should it ultimately be determined to be his property, it "should go to the benefit of all his creditors in bankruptcy," he presents this petition. The sheriff's deed of conveyance had not been acknowledged. The prayer is for an injunction to restrain the plaintiff from proceeding further on the judgment and execution, "and from having the deed for said property acknowledged by the sheriff." The petition does not expressly state that the plaintiff is the purchaser.

Parsons, for the petitioner, urged the hardship of permitting such a sale, under a doubtful title, to be made, as it must inevitably be at a sacrifice. He submitted to the court the question whether it would not be proper to interfere for the protection of the general body of the creditors. He referred to the case of *Reed*, a bankrupt, on whose petition Judge BLATCHFORD, in the

¹ We are indebted for this case to the Philadelphia Legal Intelligencer.—ED. A. L. R.

District Court of the Southern District of New York, had, by injunction, restrained a plaintiff in a judgment and execution against the bankrupt in the Supreme Court of New York from proceeding with an examination of him as a judgment-debtor in that court under a law of the state.

Opinion by

CADWALADER, J.—The case before Judge BLATCHFORD which has been cited has no apparent applicability. There was no question of an existing lien of whose fruits the creditor holding it was to be deprived. Here the equity of the general body of creditors might be to require the proceedings against the land in question to be for common benefit subject to the lien of the judgment-creditor. But in asserting this equity, the general creditors must not frustrate the right of the judgment-creditor to his lien. If there was any probability of a proceeding for common benefit at the suit either of the future assignee, or of a provisional assignee, to establish the title of the bankrupt's general creditors to the land subject to the judgment-creditors' lien, I might under some circumstances, restrain him from selling, in the mean time, at a sacrifice under his execution. This would be a jurisdiction to exercise with great caution; and might in some cases perhaps be exercisable under a bill in equity in aid of the proceedings in bankruptcy, rather than under these proceedings themselves.

The case may stand over for further consideration. In the mean time, if reason be shown, I may appoint a receiver to act as provisional assignee until the complete qualification of an assignee under the provisions of the Act of Congress. Such an assignee could inform himself as to the true interests of the general body of creditors. If a mode can be suggested of promoting their interests without other injury to the judgment-creditor than mere delay until a decision upon the title of the bankrupt, an injunction might possibly be proper. But under what circumstances this might thus be proper, cannot be suggested beforehand.

The foregoing opinion having been filed, the judge added: My last remarks are made only because I do not wish to preclude further argument if it should be desired. At present, I do not see how I can possibly interfere unless upon an offer on the part of the general creditors to make such payment of the judgment-creditor's demand as may substitute the assignee in bankruptcy

for him as to the lien of the judgment; nor how even this can be done after an actual sale by the sheriff, though the purchaser's title may not have been consummated. I do not pause to consider whether the bankrupt is the party who should have presented the petition if it were otherwise a proper one. Perhaps before assignment, it may, under this Act of Congress, be necessary in some cases to allow him to make certain applications which, after assignment, would be more proper on the part of the assignee.

The matter was not afterwards moved.

Court of Appeals of New York.

JOHN B. TREVOR ET AL., APPELLANTS, v. JOHN WOOD ET AL.,
RESPONDENTS.

Where parties residing at a distance from each other agree to communicate by telegraph in their business transactions, the same rules apply in determining whether a contract has been made as in cases of communications by letter.

Therefore, an offer accepted by telegraph constitutes a contract, although the party making the offer attempts to revoke it before his receipt of the acceptance.

An acceptance by letter of an offer is sufficient to make a contract, not by virtue of being sent through the public mail, but because it is an overt act manifesting the intention of the acceptor, and thus making the *aggregatio mentium* which is the essence of a contract. Per SCRUGHAM, J.

APPEAL from a judgment of the Supreme Court, rendered at General Term, in the First District, reversing a judgment entered upon the report of Hon. William Mitchell, referee, and ordering a new trial before the same referee.

The appellants have stipulated that if the judgment be affirmed, judgment absolute may be entered against them.

The appellants are dealers in bullion in New York, and the respondents are dealers in bullion in New Orleans. In 1859 they agreed to deal with each other in the purchase and sale of dollars, and that all communications between them in reference to such transactions should be by telegraph.

On 30th January 1860, the appellants telegraphed from New York, to the respondents, at New Orleans, asking at what price they would sell one hundred thousand Mexican dollars. On 31st of the same month the respondents answered that they would deliver fifty thousand at seven and one-fourth, and on the same day the appellants telegraphed from New York, to the defendants at New Orleans, as follows: